

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

PHILIP K. DAVIS,

Plaintiff,

v.

ETHEX CORPORATION and K-V  
PHARMACEUTICAL COMPANY,

Defendants.

Case No. 10-cv-518-JPG

**MEMORANDUM AND  
ORDER TO SHOW CAUSE**

This matter comes before the Court after plaintiff Philip K. Davis amended his complaint to add defendant K-V Pharmaceutical Company. This case was originally filed in state court, but defendant Ethex Corporation removed it to federal court under 28 U.S.C. § 1441(a) based on the Court's original diversity jurisdiction under 28 U.S.C. § 1332(a). Davis and Ethex Corporation are citizens of different states, and more than \$75,000, exclusive of interest and costs, is at issue. However, there is no indication complete diversity still exists after the addition of K-V Pharmaceutical Company as a defendant. In a case removed under 28 U.S.C. § 1441(a) that relies on original diversity jurisdiction under 28 U.S.C. § 1332(a), the Court must remand the case pursuant to 28 U.S.C. § 1447(e) when a plaintiff is permitted to amend his pleading to join a nondiverse defendant. *Schur v. L.A. Weight Loss Ctrs., Inc.*, 577 F.3d 752, 759 (7th Cir. 2009). Joinder of the nondiverse defendant destroys the complete diversity required by 28 U.S.C. § 1332(a) and divests the Court of subject matter jurisdiction. *Id.* Because Ethex Corporation, the proponent of federal removal jurisdiction, bears the burden of establishing that jurisdiction, *Schur*, 577 F.3d at 758, the Court **ORDERS** Ethex Corporation to **SHOW CAUSE** on or before November 5, 2010, why the Court should not remand this case to state court for lack

of subject matter jurisdiction. The Court will construe a failure to respond in a timely manner as an admission that federal jurisdiction does not exist and will remand this matter.

**IT IS SO ORDERED.**

**DATED: October 20, 2010**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**